

APPENDIX C

2001 NPS Management Policies Chapter 10: Commercial Visitor Services

The National Park Service will provide, through the use of concession contracts, commercial visitor services within parks that are necessary and appropriate for visitor use and enjoyment. Concession operations will be consistent with the protection of park resources and values and demonstrate sound environmental management and stewardship.

Public accommodations, facilities, and services must be consistent to the highest practicable degree with the preservation and conservation of park resources and values.

10.1 General

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 addresses concession authorizations. Section 10.3 addresses commercial use authorizations.

(Also see Director's Orders #48A: Concessions Management, and #48B: Commercial Use Authorizations)

10.2 Concessions

10.2.1 Concession Policies

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; National Park Service regulations published at 36 CFR Part 51; this chapter of NPS Management Policies; and Director's Order #89A: Concession Management, and other specific guidance that may be issued under the Director's authority.

10.2.2 Commercial Visitor Services Planning

Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks to achieve desired visitor experiences, and will be integrated into other plans and planning processes.

Concession management plans or commercial services plans will support a park's purpose and significance, exceptional resource values, and visitor experience objectives, and will be consistent with enabling legislation. These plans will also determine whether proposed concession facilities and services are necessary and appropriate, and will consider alternatives. Proposed concession operations must be economically feasible and generally supported by a feasibility study prepared by a qualified individual. Any concession facilities improvement program, or any service authorized in a concession contract, will be in conformance with the appropriate approved plan(s) for the area being considered. A decision to authorize a park concession will be based on a determination that the facility or service:

- Is necessary and appropriate for the public use and enjoyment of the park in which it is located, and identified needs are not, nor can they be, met outside park boundaries;
- Will be provided in a manner that furthers the protection, conservation, and preservation of the environment, and park resources and values;
- Incorporates sustainable principles and practices in planning, design, siting, construction, utility systems, selection and recycling of building materials, and waste management; and
- Will enhance visitor use and enjoyment of the park without causing unacceptable impacts to park resources or values.

The number, location, and sizes of sites assigned for necessary facilities will be the minimum necessary for proper and satisfactory operation of the facilities, emphasizing compatibility of design; preservation of esthetic values, and natural and cultural resources; and integration of sustainable design concepts.

For information about leasing historic structures for concession purposes, see Director's Order #38: Real Property Leasing.

10.2.3 Concession Contracting

Approved standard contract language will be used in all National Park Service concession contracts.

10.2.3.1 Terms and Conditions of Contracts

Concession services will be authorized under concession contracts, unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection, visitor needs, and other factors that the Director may deem appropriate.

10.2.3.2 Modifications

Concession contracts may be modified only by written amendment. Amendments developed after the issuance of a concession contract must be consistent with current National Park Service policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide additional visitor services only if the services are minor and comprise a reasonable extension of the existing services.

10.2.3.3 Extension

Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

10.2.3.4 Competition

In order to obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the awarding of concession contracts. The National Park Service also encourages, through outreach, the participation of American Indian, minority and women owned businesses when new business activities occur.

10.2.3.5 Third-party Agreements and Sub-concessions

Unless specified in the contract, sub-concession or other thirdparty agreements, including management agreements, for the provision of visitor services that are required and/ or authorized under concession contracts are not permitted. The NPS may also advertise for a new concession contract to provide these additional services.

10.2.3.6 Multi- park Contracts

Concessioners operating in more than one park unit must have separate contracts for each park unit. An exception may be made in the case of those park units having common National Park Service management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks).

10.2.3.7 Termination

The Service may terminate concession contracts for default and under any other circumstances specified in the concession contract.

10.2.4 Concession Operations

10.2.4.1 Operating Plans

The operating plan is an exhibit to the concession contract, and will describe operative responsibilities authorized in the contract between the concessioner and the NPS. The plan is reviewed and updated annually by the Service, in accordance with the terms of the contract. Operating plans are considered an integral part of a concessioner's contractual performance compliance.

10.2.4.2 Service Type and Quality

It is the objective of the National Park Service that park visitors be provided with high- quality facilities and services. Where appropriate, the concession contract will specify a range of facility, accommodation, and service types that are to be provided at reasonable rates.

10.2.4.3 Evaluation of Concession Operations

Concession operations will be evaluated to ensure that park visitors are provided with high- quality services and facilities, which are safe and sanitary, and meet National Park Service environmental, health, safety, and operational standards. As outlined in the Concessioner Operational Evaluation Program, the evaluation results will provide a basis for NPS management to determine whether to continue or terminate a concession contract, and whether a concessioner is eligible to exercise a right of preference in the award of a qualified new concession contract.

10.2.4.4 Interpretation by Concessioners

Concessioners will be encouraged to train their employees and, through their facilities and services, to instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management, and the stewardship of its resources. When the provision of interpretive services is required by the contract, concessioners will provide formal interpretive training for their employees, or will participate in formal interpretive training that is either offered by the NPS or co- sponsored by the concessioner.

Instilling appreciation of the park in visitors can be accomplished in many ways. For example, it can be accomplished through guided activities; the design, architecture, landscape, and decor of facilities; educational programs; interpretive menu design and menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays also present opportunities to educate visitors about park history; natural, cultural, and historical resources; and sustainable environmental management.

Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with, and supportive of, the interpretive themes, goals, and objectives articulated in each park's planning documents, mission statement, and/ or interpretive prospectus.

(See Chapter 7: Interpretation and Education)

10.2.4.5 Merchandise

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. Although there is no Service- wide list of specific preferred merchandise, priority will be given to those sale items that interpret, and foster awareness and understanding of, the park and its resources. Merchandise should have interpretive labeling, or include other information to indicate how the merchandise is relevant to the park's interpretive theme(s).

Each park with concession activities will have a gift shop mission statement, based on the park's concession service plan or GMP. Concessioners will develop and implement a merchandise plan based on the park's gift- shop mission statement. The merchandise plan must be satisfactory to the Director, and should ensure that merchandise sold or provided reflects the significance of the park, and promotes the conservation of the park's geology; wildlife; plantlife; archeology; local Native American culture; local ethnic culture; historical significance; and other park resources and values. The plan should also integrate pollution prevention and waste- reduction objectives and strategies for merchandise.

Merchandise must be available at a range of prices. Theme related merchandise manufactured or handcrafted in the United States— particularly in a park's geographic vicinity— will be emphasized. The revenue derived from the sale of United States Indian, Alaska native, native Samoan, and native Hawaiian handcrafts is exempt from any franchise fee payments. Foreign merchandise is not encouraged, but will not be prohibited.

10.2.4.6 Artifacts and Specimens

Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or National Park Service policies. Some merchandise may be determined by the park superintendent to be locally sensitive or inappropriate for sale, and may, at the discretion of the superintendent, be prohibited for retail sale. The sale of original objects, artifacts, or specimens of a historic, archeological, paleontological, or biological nature is prohibited. Replicated historic, archeological, paleontological, or biological objects, artifacts, or specimens may be sold if they are obvious replicas and clearly labeled.

Any geological merchandise that is approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained from inside park boundaries. The proposed sale of any replicas, or of geological merchandise, must be addressed in the gift shop merchandise plan.

10.2.4.7 Rates

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Director.

10.2.4.8 Risk Management Program

Concession contracts require each concessioner to develop a risk management program, which is approved by the superintendent, and is in accord with the Occupational Safety and Health Act and the National Park Service Concession Risk Management Program.

Concessioners are responsible for managing all of their operations in a manner that minimizes risk and controls loss due to accident, illness, or injury. To ensure compliance, the Service will include a risk management evaluation as part of its standard operational review of concession operations.

10.2.4.9 Natural and Cultural Resource Management Requirements

Concessioners are required to comply with applicable provisions of all laws, regulations, and policies that apply to natural and cultural resource protection. The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed on or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, Executive orders, regulations, and policies pertaining to cultural properties.

The National Park Service will assist concessioners in understanding and complying with regulations for the protection of historic properties (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in National Park Service guidance documents.

(See Chapter 4, Natural Resource Management; Use of Historic Structures 5.3.5.4.7. Also see Reference Manual 24: the Museum Handbook, and 28: the Cultural Resource Management Guideline; Director's Order #38: Real Property Leasing, and #48A: Concessions Management)

10.2.4.10 Environmental Program Requirements

In the operation of visitor services, concessioners will be required by contract to meet environmental compliance objectives by:

- Complying with all applicable laws pertaining to the protection of human health and the environment; and
- Incorporating best management practices (BMPs) in all operations, construction, maintenance, acquisition, provision of visitor services, and other activities under the contract.

Concessioners will be required by contract to develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive, written environmental management program (EMP) to achieve environmental management objectives. The EMP must be updated at least annually, and must be approved by the Director.

The EMP must account for all activities with potential environmental impacts conducted by the concessioner, or to which the concessioner contributes. The scope and complexity of the EMP may vary based on the type, size, and number of concessioner activities.

Superintendents are encouraged to require the EMP to be submitted as part of the prospectus package. The National Park Service will review concessioner compliance with the EMP under the contract. The National Park Service will also conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the concessions environmental audit program. The concessioner will be responsible for corrective actions required by law, and identified during the environmental compliance audits.

The National Park Service will assist concessioners in understanding environmental program requirements, and will also include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

(See Compensation for Injuries to Natural Resources 4.1.6; Compensation for Damages 5.3.1.3; Integrated Pest Management Program 4.4.5.2; Overnight Accommodations and Food Services 9.3.2. Also see Director's Order #83: Public Health)

10.2.4.11 Insurance

Concession contracts will identify the types and minimum amounts of insurance coverage required of concessioners in order to:

- provide reasonable assurance that concessioners have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of the operator;
- protect the government against potential liability protect the government against potential liability for claims based on the negligence of the operators; and
- enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by fire or other hazards.

Concessioners will not be permitted to operate without liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A: Concession Management.

10.2.4.12 Food Service Sanitation Inspections

Concessioners who prepare food on or off park lands, or serve food on park lands will be subject to inspection for compliance with all applicable health and sanitation requirements of local and state agencies, the U. S. Public Health Service, and the Food and Drug Administration.

(Also see Director's Order #83: Public Health)

10.2.4.13 Smoking

Generally, all NPS concession facilities will be smoke free. The only exceptions will be specifically designated smoking areas and rooms. The sale of tobacco products through vending machines is prohibited.

(See Executive Order 13058 (Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace))

10.2.5 Concessions Financial Management

Concession contracts must provide for payment to the government of a franchise fee, or other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States is subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

10.2.5.1 Franchise Fees

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract must be specified in the concession contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. Contracts with a term of more than five years will include a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision will provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

10.2.5.2 Franchise Fee Special Account

All franchise fees and other monetary considerations will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park unit in which it was generated, for visitor services and funding high- priority and urgently necessary resource management programs and operations.

10.2.5.3 Record- keeping System

All concessioners will establish and maintain a system of accounts and a record- keeping system that utilize written journals and general ledger accounts to facilitate the preparation of annual concessioner financial reports.

10.2.5.4 Annual Financial Reports

Concessioners will be required to submit an annual financial report that reflects only the operations that they are authorized to pursue.

10.2.5.5 Donations to the NPS

The National Park Service will not solicit or accept donations or gifts from entities that have, or are seeking to obtain or establish a contract, lease, or other business arrangement with the Service. Nor will the NPS require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21: Donations and Fundraising.

10.2.6 Concession Facilities

10.2.6.1 Design

Concession facilities will be of a size and at a location that the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and meet accessibility requirements as set forth in applicable accessibility guidelines. Proposed concession facilities must conform to NPS standards for sustainable design, universal design, and architectural design. Concession development or improvement proposals must undergo review for compliance with NEPA and section 106 of NHPA (16 USC 470f), and be carried

out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and other applicable legal requirements.

In addition to general park design requirements, the NPS will apply value analysis during the design process to analyze the functions of facilities, processes, systems, equipment, services, and supplies. Value analysis must be used to help achieve essential functions at the lowest life-cycle cost, consistent with required performance, reliability, environmental quality, and safety criteria and standards.

(See Facility Planning and Design 9.1.1)

10.2.6.2 Accessibility of Commercial Services

Concessioners share the National Park Service's responsibility to provide employees and visitors with the greatest degree of access to programs, facilities, and services that is reasonable, within the terms of existing contracts and agreements. Applicable laws include, but are not limited to (1) regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (43 CFR Part 17), which prohibits discrimination on the basis of disability in programs or activities conducted by federal executive agencies; and (2) the Architectural Barriers Act of 1968, which requires physical access to buildings and facilities. Where there is no specific language identifying applicable accessibility laws in an existing concession contract, the NPS will address the issue of compliance in the annual concession operating plan.

(See Physical Access for Persons with Disabilities 5.3.2; Accessibility for Persons with Disabilities 8.2.4 and 9.1.2. Also see Director's Order #42: Accessibility for Visitors with Disabilities)

10.2.6.3 Maintenance

Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use, in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must include a current maintenance plan as specified in the concession contract. Maintenance plans are an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic properties and cultural landscapes will be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

10.2.6.4 Utilities and Services

Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. The Service may provide utilities to the concessioner for use in connection with the operations required or authorized under the contract, when available, at rates to be determined in accordance with applicable laws. If the Service does not provide utilities to the concessioner, the concessioner will, with the written approval of the Director, and under any requirements prescribed by the Director, (1) secure necessary utilities at its own expense from sources outside the area; or (2) install the utilities within the area, subject to conditions mentioned in the contract.

(Also see Director's Order #35B: Sale of Park Utilities and Services to Support Activities Within Parks)

10.2.6.5 Closure of Commercial Operations During Government Shutdown

The Anti-Deficiency Act requires federal agencies to suspend all non-essential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All concessioner-operated programs and services must cease, and visitors must be asked to leave within 48 hours.

All commercial facilities and services in a park will be closed in order to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through-roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, the staffing of entrance stations). These commercial facilities may include operations such as service stations, food services, stores, and lodging, or portions of such operations that will not contribute to additional park expenses. The commercial facility in question should have access directly from the road or highway, and not require the re-opening of park roads having other destinations. More specific aspects of closures may be guided by a Servicewide shutdown plan.

10.2.7 Concessioner Employees and Employment Conditions

10.2.7.1 Non-discrimination

Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public.

10.2.7.2 Substance Abuse

In compliance with state and federal regulations condemning substance abuse, the NPS prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility or in any activity taking place on National Park Service lands. Concessioners are required to provide and advise employees about the availability of Employee Assistance Programs addressing substance abuse problems.

10.2.8 National Park Service Employees

10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners

National Park Service employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the government's advantage, and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

National Park Service employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their assistant ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

10.2.8.2 Employment of NPS Personnel or Family Members by Concessioners

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialist may not be employed by a concessioner in the specific park in which the NPS employee works.

(Also see Director's Order #37: Home Businesses in Parks)

10.2.8.3 NPS Employee Ownership or Investment in Concession Businesses

Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no National Park Service concession contract or commercial use authorization to conduct commercial services in a park will be issued to National Park Service employees or their spouses and minor children who are owners, partners,

corporate officers, or general managers of any business seeking such a contract in federal land managed by the Department of the Interior. Further, to avoid the appearance of partiality and conflicts of interest, and to comply with ethics laws that apply to all federal employees, National Park Service employees may not work on any matter involving a business in which they, their spouse, or their minor children have a financial interest.

10.2.8.4 Concession Management Personnel Qualifications

To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified as competent. All personnel vacancy announcements issued for concession management must include program competencies.

10.3 Commercial Use Authorizations

Commercial Use Authorizations (CUAs) may be issued under the authority of 16 USC 5966. CUAs are not considered concessions contracts.

As of the date of publication of this edition of Management Policies, the NPS has not yet issued policies or regulations for the administration of CUAs. However, the applicable provisions of law are quite prescriptive and should be carefully considered. A more detailed discussion of CUAs will be included at a later date in implementing regulations and Director's Order 48B: Commercial Use Authorizations.